

# Disciplinary Actions

## Disciplinary Actions Reported For July

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of June 2001.

### Firms Fined, Individuals Sanctioned

**Coleman & Company Securities, Inc. (CRD #1486, New York, New York) and Mark Bennett Haiken (CRD #233565, Registered Principal, Great Neck, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$7,500, jointly and severally. The firm was fined an additional \$6,864, which includes the disgorgement of \$3,864 in commissions earned. Haiken was suspended from association with any NASD member in a financial and operations principal capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Haiken, failed to maintain its minimum required net capital while conducting a securities business. The findings also stated that the firm permitted individuals employed by the firm to act in a registered capacity while they had an inactive registration status as a result of their failure to timely complete the Regulatory Element of the NASD's Continuing Education Program.

Haiken's suspension began June 18, 2001, and concluded at the close of business June 22, 2001.  
**(NASD Case #C10010059)**

### Firms And Individuals Fined

**Andrew Garrett, Inc. (CRD #36250, New York, New York) and Revan Richard Schwartz (CRD #2748110, Registered Principal, Howard Beach, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schwartz, served as placement agent for a best efforts "part-or-none" private placement offering and, during the contingency period, failed to ensure that the money or other consideration received was promptly deposited in a separate bank account, as agent or trustee for the persons who had the beneficial interests therein, until it could be determined whether the part or none contingency would be satisfied and the funds were either returned to the entitled persons or released to the issuer. The findings also stated that the respondents failed to ensure that all funds were promptly transmitted to a bank that had agreed in writing to hold all such funds in escrow and to transmit or return the funds directly to the entitled persons when the contingency had occurred.  
**(NASD Case #C10010071)**

**Patterson Travis, Inc. (CRD #16540, Englewood, Colorado) and David Thomas Travis (CRD #448950, Registered Principal, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. The firm was fined an additional \$4,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm

incorrectly reported to Automated Confirmation Transaction Services<sup>SM</sup> (ACT<sup>SM</sup>) that it was acting in a principal capacity for over-the-counter bulletin board (OTCBB) securities transactions when, in fact, it was acting in an agency capacity for its customers. The findings also stated that the firm failed to state the reported price and markup/markdown on customer confirmations. In addition, the NASD found that the firm, acting through Travis, failed to report quarterly to the NASD customer complaints that it received, including one that alleged the misappropriation of funds or securities. (**NASD Case #C10010064**)

**Tarpon Scurry Investments, Inc. (CRD #34635, Hoboken, New Jersey) and Derek Chester Ferguson (CRD #3008808, Associated Person, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,000 and Ferguson was censured and fined \$42,649.30 which includes the disgorgement of \$41,649.30 in unlawful profits. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to adequately establish and enforce written procedures to supervise its underwriting business and insure compliance with NASD rules and regulations, in that the firm allowed a non-controlling owner of the firm to participate in the initial public offering (IPO) of a security when the firm was a selling group member of the IPO and the IPO went "hot." The findings also stated that the firm executed limit order transactions outside the national best bid or offer, and failed to immediately execute limit order transactions when they were received even

though the inside bid/ask price was at or better than the limit order price at that time. The NASD also found that the firm received limit orders to buy a security and failed to reflect the orders in its quotes. Furthermore, the NASD found that the firm received a customer limit order, changed its bid, and failed to reflect the earlier open customer limit order. In addition, the findings stated that Ferguson participated in an IPO that went "hot" and profited \$41,649.30 when he sold the stock in the aftermarket. (**NASD Case #C10010075**)

### **Firms Fined**

**Andover Brokerage, L.L.C. (CRD #33848, Montebello, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$22,500, and required to revise its written supervisory procedures concerning short sales. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in certain securities, all of which were Nasdaq National Market, (NNM) securities, at or below the current inside bid when the current bid was below the preceding inside bid in the security. The findings also stated that the firm executed short sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions, and executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. Furthermore, the NASD found that the firm executed long sale transactions and incorrectly reported each of these transactions to ACT with a short sale modifier; failed to report to ACT the correct symbol indicating whether the firm

executed transactions in eligible securities in a principal or agency capacity; and executed short and long sale orders and failed to properly mark the order tickets as short or long for those orders. Also, the NASD determined that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning short sales. (**NASD Case #CMS010049**)

**Bestvest Investments, Ltd. (CRD #40302, Harper Woods, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$8,000, and fined \$6,000, jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it used the mails or other means or instrumentalities of interstate commerce to effect transactions in securities when its debt-to-debt-equity ratio exceeded 70 percent. The findings also stated that the firm failed to prepare monthly net capital computations, failed to prepare accurate trial balances and net capital computations, and filed inaccurate FOCUS Part IIA reports with the NASD. Furthermore, the NASD determined that the firm failed to establish and maintain a written needs analysis and training plan to provide a continuing and current education program for its registered persons to enhance their securities knowledge, skill, and professionalism for the Firm Element of the NASD's Continuing Education Rules, and failed to administer a continuing education program and maintain records documenting the contents and completion of the programs by its registered persons. (**NASD Case #C8A010035**)

**Interactive Brokers LLC (CRD #36418, Greenwich, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it exercised a short sale transaction for a customer in NNM securities, at or below the current inside bid, when the current inside bid was below the preceding inside bid in each of the securities. The findings also stated that the firm executed short sale orders for a customer in certain securities and failed to make an affirmative determination prior to executing such transactions for the customer. Also, the NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning short sales. (**NASD Case #CMS010065**)

**J. P. Morgan Securities, Inc. (CRD #15733, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported to the Order Audit Trail System (OATS<sup>SM</sup>) execution reports with respect to equity securities traded on The Nasdaq Stock Market<sup>®</sup> that contained either inaccurate, incomplete, or improperly formatted data and because of such, the OATS system was unable to match the execution reports to the related trade reports to ACT. The findings also stated that the firm failed to transmit order information to OATS that was required to be transmitted in the

electronic form prescribed by the NASD. In addition, the NASD found that a reporting agent responsible for submitting a portion of the firm's OATS data inadvertently disabled the OATS reporting for the firm and as a result of such actions, OATS reports were not transmitted to the NASD. The NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS reporting and the firm failed to report to Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) transactions in FIPS securities within five minutes after execution. (**NASD Case #CMS010052**)

**Logan Rock (CRD #42691, Arlington, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in NNM securities, at or below the current inside bid, when the current inside bid was below the preceding inside bid in each of the securities and at a price less than 1/16th above the inside bid when the current inside spread was 1/16th or greater in each of the securities. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short sales. (**NASD Case # CMS010060**)

**May Davis Group, Inc. (CRD #35622, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written

supervisory procedures relating to the Securities and Exchange Commission (SEC) and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the SEC and NASD firm quote rules. (**NASD Case #CMS010056**)

**National Securities Corporation (CRD #7569, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report any applicable options positions to the NASD, failed to update its quotes to reflect the customers' limit orders, and incorrectly reported short positions to the NASD. The findings also stated that the firm executed short sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions. The NASD also found that the firm's supervisory system failed to include adequate written supervisory procedures to assure compliance with applicable securities laws and regulations concerning purchases of "B" share mutual funds. In addition, the NASD found that the firm failed to create and implement a supervisory system reasonably designed

to achieve compliance with applicable securities laws and regulations regarding the report of large option positions, the detection of errors or omissions of required quote updates, short interest reporting, and insuring that an affirmative determination is made prior to effecting short sales. (**NASD Case #C3B010011**)

**Spear, Leeds & Kellogg, L.P. (CRD #3466, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in approving the opening of new customer accounts and making a market for securities, the firm did not enforce its written supervisory procedures by failing to obtain certain new account information required by its written procedures before opening new customer accounts, and failed to detect that its trading department had initiated quotations in securities without the firm's written approval. (**NASD Case #CMS010054**)

#### **Individuals Barred Or Suspended**

**Paul Louis Anderson (CRD #2837647, Registered Representative, Rock Hill, South Carolina)** was barred from association with any NASD member in any capacity and ordered to pay \$9,000, plus interest, in restitution to his former employer. The sanctions were based on findings that Anderson credited his personal bank account \$9,000 using his employment position at the bank and his work computer, and withdrew the \$9,000 credited to his account through a series of withdrawals from automated teller machines.

Anderson also failed to respond to an NASD request for information. (**NASD Case #C07010002**)

**Assadour Michael Ashdjian (CRD #3170342, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ashdjian willfully failed to amend a Form U-4 to disclose a material fact. (**NASD Case #C10010010**)

**Anthony Daniel Bernardo (CRD #1233834, Registered Representative, Granada Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Bernardo consented to the described sanctions and to the entry of findings that he participated in private securities transactions involving purchases of notes by public customers without providing prior written or oral notification to his member firms.

Bernardo's suspension began June 18, 2001, and will conclude September 15, 2001. (**NASD Case #C02010019**)

**Charles Thomas Bernardo, Sr. (CRD #818057, Registered Representative, Northridge, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bernardo consented to the described sanction and to the entry of findings that he participated in private securities transactions involving purchases of notes by public customers without providing prior written or oral notification to his member firms. According to the

findings, the private securities transactions involved purchases of notes by public customers in a securities offering. The NASD found that the customers invested a total of \$1,133,185 in the offering and Bernardo falsely represented to certain customers that he had invested in the offering when, in fact, he had not. (**NASD Case #C02010018**)

**Michael Joseph Bernardo (CRD #2334263, Registered Representative, Granada Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Bernardo consented to the described sanctions and to the entry of findings that he participated in private securities transactions involving purchases of notes by public customers without providing prior written or oral notification to his member firms.

Bernardo's suspension began June 18, 2001, and will conclude August 16, 2001. (**NASD Case #C02010020**)

**Henri Michel Bise (CRD #2949724, Registered Representative, Rio de Janeiro, Brazil)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Bise consented to the described sanctions and to the entry of findings that he exercised discretionary authority in the account of a public customer without the customer's prior written authorization and the prior written acceptance of the account as discretionary by his member firm.

Bise's suspension began June 18, 2001, and concluded at the close of business June 29, 2001. (**NASD Case #C10010066**)

**James Hugh Boughamer (CRD #26869, Registered Representative, Valrico, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$1,500, suspended from association with any NASD member in any capacity for six months, and required to disgorge \$1,200 in commissions to public customers. Without admitting or denying the allegations, Boughamer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Boughamer's suspension began July 2, 2001, and will conclude January 1, 2002. (**NASD Case #C11010022**)

**Robert Lester Cawman (CRD #2456254, Registered Representative, Union, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,000 and suspended from association with any NASD member in any capacity for three months. Cawman also agreed to an undertaking that he will not be associated with any NASD member for one year following the acceptance of the AWC that is unwilling or unable to provide special supervision under terms and conditions substantially identical to those contained in a Special Supervision Agreement entered into by him and his previous member firm. In light of the financial status of Cawman, a fine of \$2,000 was imposed. Without admitting or denying the allegations, Cawman consented to the described sanctions and to the entry of findings that he engaged

in private securities transactions and failed to provide his member firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions.

Cawman's suspension is deemed to have been served based upon a three-month suspension imposed by the Ohio Division of Securities. (**NASD Case #C8B010010**)

**Joseph Carmello Cernera, Jr. (CRD #2652602, Registered Representative, Manalapan, New Jersey)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. In light of the financial status of Cernera, no monetary sanctions have been imposed. Without admitting or denying the allegations, Cernera consented to the described sanction and to the entry of findings that he engaged in excessive and unauthorized trading in the accounts of public customers. The findings also stated that Cernera exercised discretion in the account of a public customer without prior written authorization from the customer and prior written approval from his member firm to exercise discretion. The NASD also found that Cernera willfully failed to disclose material information on his Forms U-4. (**NASD Case #C3A000033**)

**Michael Paul Cilmi (CRD #1289290, Registered Principal, South Cairo, New York)** was barred from association with any NASD member in any capacity and ordered to pay \$14,559.08, plus interest, in restitution to public customers. The sanctions were based on findings that Cilmi effected unauthorized transactions in the accounts of public customers. (**NASD Case #C10000220**)

**Harvey Jay Cohen (CRD #1754835, Registered Representative, Bensalem, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cohen consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with prior written notice describing the proposed transactions and his proposed role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions. (**NASD Case #C9A010015**)

**Denice Eubanks Douglas (CRD #1423457, Registered Representative, Windsor Heights, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Douglas consented to the described sanction and to the entry of findings that she willfully failed to update and disclose a material fact on her Form U-4. (**NASD Case #C04010020**)

**Bradford Bailing Dyer (CRD #1020818, Registered Representative, Columbia, Maryland)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two years and required to disgorge \$32,173.17, plus interest, to public customers. In light of Dyer's payment of \$5,000 to public customers in a settlement with the Maryland Securities Division, no fine has been imposed. Satisfactory proof of payment of the disgorgement must be

provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dyer consented to the described sanctions and to the entry of findings that he engaged in the offer and sales of securities to public customers and failed to provide his member firm prior written notice of the transactions.

Dyer's suspension began November 11, 1999, and will conclude November 10, 2001. **(NASD Case #C9A000028)**

**Michael Craig Efrusy (CRD #2931976, Registered Principal, Hasbrouck Heights, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Efrusy consented to the described sanctions and to the entry of findings that he failed to disclose on Forms U-5 for registered representatives their involvement in private securities transactions.

Efrusy's suspension began June 18, 2001, and will conclude at the close of business July 17, 2001. **(NASD Case #C10010063)**

**Otto Karl Elser (CRD #1216051, Registered Representative, New Fairfield, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to disgorge \$150,000, representing commissions earned, to public customers. Satisfactory

proof of payment of the disgorgement must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Elser consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. **(NASD Case #C11010023)**

**Carlton Perry Fletcher (CRD #2455798, Registered Representative, Queens, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to pay \$800, plus interest, in restitution to public customers. Without admitting or denying the allegations, Fletcher consented to the described sanctions and to the entry of findings that he exercised discretion in the account of public customers without their prior written authorization, and/or did not have the account accepted, in writing, as discretionary by his member firm.

Fletcher's suspension will begin July 16, 2001, and will conclude at the close of business July 27, 2001. **(NASD Case #C10010074)**

**James Gaberkorn a.k.a. Gennady Gaberkorn (CRD #1718031, Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gaberkorn consented to the described sanction and to the entry of findings that he executed transactions in the account of a public customer

without the customer's prior knowledge, authorization, or consent. The findings also stated that Gaberkorn engaged in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C10000187)**

**Fredric Neal Gabler (CRD #2374049, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$75,000, suspended from association with any NASD member in any capacity for two weeks, and required to pay \$6,512.50, plus interest, in restitution to member firms. Without admitting or denying the allegations, Gabler consented to the described sanctions and to the entry of findings that he entered orders to sell shares of a Nasdaq security into an electronic equity matching system and about the time he entered such orders, entered proprietary priced limit orders to buy shares of the same stock into an electronic communications network (ECN) at prices that he knew would improve the national best bid in the security. According to the findings, the full price and size of such orders would be reflected in The Nasdaq Stock Market® as the best prices and sizes at which a market participant was willing to buy shares of the stock, and Gabler knew that an ECN cross in the stock was scheduled to take place within minutes of the time that he entered such orders, and that the price at which the cross was to take place was directly based, in part, on the national best bid in the stock at the time of the cross. The NASD found that by engaging in this course of conduct, Gabler sold shares of the stock through an ECN at prices that were higher than he would otherwise have been able to sell shares of the stock; and that

within minutes after he received the executions of the orders to sell shares of the stock, he canceled or permitted to expire the proprietary priced limit orders that he had placed into the ECN, thereby securing \$6,512.50 in profits.

Gabler's suspension will begin July 16, 2001, and will conclude July 29, 2001. (NASD Case #CMS010064)

**Christopher Daniel Geis (CRD #2177608, Registered Representative, Wood-Ridge, New Jersey)** was barred from association with any NASD member in any capacity and required to pay \$57,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Geis converted customer funds to his own use and benefit, without the customer's knowledge or consent. Geis also failed to respond to NASD requests for information. (NASD Case#C9B000030)

**Marc Alan Goldberg (CRD #2481041, Registered Representative, Ft. Lauderdale, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Goldberg recommended to public customers the purchase of shares of stock and made price predictions and misrepresentations concerning the stock without having a reasonable basis for such representations to customers. Goldberg also failed to respond to NASD requests for information. (NASD Case #C07000094)

**Gregory George Groeller (CRD #2768372, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, which includes disgorgement of

\$622.40 in commissions received, suspended from association with any NASD member in any capacity for 30 business days, and required to pay \$18,174.15, plus interest, in restitution to public customers. The fine and disgorgement payment and satisfactory proof of payment of the restitution must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Groeller consented to the described sanctions and to the entry of findings that he engaged in transactions in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the accounts.

Groeller's suspension began June 18, 2001, and will conclude at the close of business July 30, 2001. (NASD Case #C10010067)

**Valerie Jane Helton (CRD #2466067, Registered Representative, Leesville, Louisiana)** was fined \$20,251.50, which includes the disgorgement of commissions earned, and suspended from association with any NASD member in any capacity for 180 days for engaging in private securities transactions and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before reentry into the securities industry. The sanctions were based on findings that Helton engaged in private securities transactions, for compensation, and failed to provide prior written notice to, and receive prior approval from, her member firm. The findings also stated that Helton failed to respond to NASD requests for information.

Helton's bar became effective June 4, 2001. (NASD Case #C05000067)

**Bruce Ronald Howe, Jr. (CRD #2731865, Registered Representative, Bismarck, North Dakota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Howe consented to the described sanctions and to the entry of findings that he affixed a public customer's signature on forms needed to support insurance applications, without the customer's knowledge or consent.

Howe's suspension began July 2, 2001, and will conclude at the close of business August 30, 2001. (NASD Case #C04010022)

**Mohamed Imran Hussain (CRD #2287607, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$5,870.98, which includes disgorgement of \$870.98 in commissions received, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Hussain consented to the described sanctions and to the entry of findings that he guaranteed the value of a public customer's account.

Hussain's suspension will begin July 16, 2001, and will conclude at the close of business August 10, 2001. (NASD Case #C10010046)

**Shannon Johnson (CRD #2884555, Associated Person, Montgomery Village, Maryland)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Johnson failed to respond to NASD requests for information. (NASD Case #C9A990029)

**Paul Kazak (CRD #2162021, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$23,730.31, plus interest, in restitution to member firms. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kazak consented to the described sanctions and to the entry of findings that he exercised discretionary trading authority over customer accounts, failed to promptly notify the executing firms of his association with a member firm, and failed to promptly notify his member firm of the existence of the accounts at the executing firms. The findings also stated that Kazak exercised discretionary power over customer securities accounts without the customers' prior written authorization.

Furthermore, the NASD found that Kazak knowingly entered priced limit orders in Nasdaq securities into an electronic communication network through his member firm at prices that would improve the national best bid or offer for such securities, in that the full price and size of such orders would be reflected in the public quotation stream as the best prices and

sizes at which a market participant was willing to buy or sell such securities. The NASD found that after having entered such orders, Kazak entered orders to buy and sell shares of such securities on behalf of customer securities accounts, and routed the orders to market makers whose automated execution systems were programmed to buy or sell such securities on an automated basis at prices equal to the national best bid or offer. The NASD determined that Kazak knowingly engaged in this course of conduct and sold shares of these securities at prices that he would not otherwise have been able to obtain, and he canceled the orders within seconds after he received the executions of the orders and obtained \$23,730.31 in profits.

Kazak's suspension began June 18, 2001, and will conclude at the close of business December 17, 2001. (NASD Case #CMS010073)

**Mark Mitchell Krist (CRD #2676768, Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 60 days, 30 of which were deemed served as a result of a suspension from a member firm, and required to pay \$1,793.75, plus interest, in restitution to member firms. Without admitting or denying the allegations, Krist consented to the described sanctions and to the entry of findings that he knowingly entered priced limit orders in Nasdaq securities into an electronic communication network through his member firm at prices that would improve the national best bid or offer for such securities, in that the full price and size of such orders would be reflected in the

public quotation stream as the best prices and sizes at which a market participant was willing to buy or sell such securities. According to the findings, after having entered such orders, Krist knowingly entered orders to buy and sell shares of securities on behalf of his proprietary trading account at his member firm and routed the orders to market makers whose automated execution systems were programmed to buy or sell such securities on an automated basis at prices equal to the national best bid or offer. The NASD determined that Krist engaged in securities transactions at prices that he would not otherwise have been able to obtain, and within seconds after he received the executions of the orders, he canceled the orders and secured profits of \$1,793.75.

Krist's suspension began June 18, 2001, and will conclude at the close of business July 17, 2001. (NASD Case #CMS010051)

**Richard Wayne Kulaszewski (CRD #1972404, Registered Principal, West Belmar, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kulaszewski consented to the described sanction and to the entry of findings that he engaged in a fraudulent scheme to conceal the purchase of warrants of a hot issue by purchasing the warrants through a public customer's account that he controlled and selling the warrants to another customer at a profit. According to the findings, in furtherance of this scheme, Kulaszewski failed to disclose to the customer that the warrants he was selling were securities in which he held a beneficial interest, provided a false

response on a final allocation form for the customer accounts purchasing the warrants, and caused false information to be entered on the customer's account opening form. The findings also stated that Kulaszewski provided false and/or misleading testimony to the NASD during an on-the-record interview. (**NASD Case #C9B010048**)

**Thomas James Kunkle (CRD #2263516, Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Kunkle consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in a securities account.

Kunkle's suspension will begin July 16, 2001, and will conclude at the close of business July 20, 2001. (**NASD Case #C8A010032**)

**Yulin Joseph Lee (CRD #2806739, Registered Representative, Irvine, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lee executed securities transactions for public customers while not registered with the NASD. Lee also failed to respond to NASD requests for information. (**NASD Case #C02990049**)

**Sanford Ira Levy (CRD #308358, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with any NASD

member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Levy consented to the described sanctions and to the entry of findings that he forged the signatures of public customers or members of the public to documents required to purchase fixed and variable life insurance products.

Levy's suspension began June 18, 2001, and will conclude at the close of business June 17, 2003. (**NASD Case #C8B010011**)

**Donna Ann Lewis (CRD #4006166, Registered Representative, Pasadena, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$1,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on a Form U-4 submitted to the NASD.

Lewis' suspension began June 4, 2001, and concluded at the close of business July 3, 2001. (**NASD Case #C9A010013**)

**James Henry Luther Jr. (CRD #1643047, Registered Representative, Tallahassee, Florida)** was fined \$12,000 and suspended from association with any NASD member in any capacity for one year for free-riding and withholding, and barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The sanctions were based on findings that Luther purchased shares of securities that traded at a premium in the secondary market in violation of the NASD's Free-Riding and Withholding Interpretation.

Luther's bar became effective May 25, 2001. (**NASD Case #C07010001**)

**Daniel Dwight Manoff (CRD #1720001, Registered Representative, Poolesville, Maryland)** was barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an OHO decision. The sanction was based on findings that Manoff made unauthorized use of a co-worker's credit cards.

Manoff has appealed this action to the SEC. Manoff's bar was effective April 26, 2001. (**NASD Case #C9A990007**)

**Richard Joseph Marchand, Jr. (CRD #2451717, Registered Representative, Warren, Rhode Island)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marchand consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (**NASD Case #C11010024**)

**Vincent Anthony Maresco (CRD #2405771, Registered Representative, Howard Beach, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maresco consented to the described sanction and to the entry of findings that he engaged in the unauthorized purchase of shares of stock for the account of a public customer. The findings also stated that Maresco failed to respond to NASD requests to appear for an on-the-record interview. (**NASD Case #C9B010035**)

**Jason Joel Martin (CRD #4022372, Associated Person, Astoria, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Martin consented to the described sanction and to the entry of findings that, while employed by an NASD member firm, he converted \$775 in gift checks and used these funds for his own use and benefit, without the intended recipient's knowledge or consent. **(NASD Case #C9B010042)**

**James Alvin McLean (CRD #1409101, Registered Representative, Lansdowne, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McLean consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4. The findings also stated that McLean participated in outside business activities and failed to provide written notice of such activities to his member firm.

McLean's suspension began July 2, 2001, and will conclude September 1, 2001. **(NASD Case #C9B010046)**

**Brenna Lee McMillan (CRD #4248254, Registered Representative, Apache Junction, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which she was

fined \$7,500 and suspended from association with any NASD member in any capacity for 15 business days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McMillan consented to the described sanctions and to the entry of findings that she submitted a Form U-4 to the NASD that contained inaccurate information.

McMillan's suspension began June 4, 2001, and concluded at the close of business June 22, 2001. **(NASD Case #C3A010016)**

**Thomas Keith McNeill (CRD #714999, Registered Principal, Allenwood, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam as an investment company and variable contracts products principal (IP). If McNeill fails to requalify, he will be suspended from acting in an IP capacity until the exam is successfully completed. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McNeill consented to the described sanctions and to the entry of findings that he failed to register or report on the firm's Form BD a branch office, and failed to file with the NASD sales literature concerning registered investment companies within 10 days of first use or publication by his member firm. The findings also stated that McNeill permitted his firm's use of public communications that failed

to provide a sound basis for evaluating the facts in regard to any particular security or type of security industry discussed or service offered and/or contained exaggerated, unwarranted, or misleading statements or claims.

McNeill's suspension began June 18, 2001, and will conclude at the close of business August 16, 2001. **(NASD Case #C10010062)**

**Jay M. Melhado (CRD #4296787, Associated Person, Toms River, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Melhado consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on a Form U-4.

Melhado's suspension began June 4, 2001, and concluded July 3, 2001. **(NASD Case #C9A010012)**

**Bernard James Menke (CRD #1034173, Registered Representative, Davenport, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Menke consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to,

and receiving approval from, his member firms.

Menke's suspension began June 18, 2001, and will conclude at the close of business December 17, 2001. **(NASD Case #C04010021)**

**Jeffrey Mitchell (CRD #2113884, Registered Principal, Red Hook, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Mitchell, no monetary sanctions have been imposed. Without admitting or denying the allegations, Mitchell consented to the described sanction and to the entry of findings that Mitchell recommended unsuitable trading in the accounts of public customers resulting in excessive trading and churning. The findings also stated that Mitchell recommended unsuitable trading in a margin account of a public customer that resulted in highly concentrated positions in certain stocks causing the customer's account to suffer losses. Mitchell's recommendations constituted a breach of fiduciary obligations to his clients in a manner inconsistent with his clients' financial needs and objectives, ignoring their financial situation and the character of the accounts and creating losses in each of the accounts. **(NASD Case #C11010020)**

**Brandon Corey Negron (CRD #2785979, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 15 business days, ordered to requalify as a general securities representative within 90 days from the date the AWC was issued,

and required to pay \$587.31, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Negron consented to the described sanctions and to the entry of findings that he engaged in transactions in the account of a public customer without the customer's consent or authorization.

Negron's suspension began July 2, 2001, and will conclude at the close of business July 23, 2001. **(NASD Case #C10010070)**

**Louis Perosi, Jr. (CRD #360441, Registered Principal, Stroudsburg, Pennsylvania)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Perosi willfully failed to promptly amend his U-4 to disclose a material fact and provided false testimony to the NASD during an on-the-record interview. The findings also stated that Perosi sold redeemable preferred shares to investors in a private offering and gave prospective investors an offering memorandum that omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaged in acts, practices or a course of business which operated, or could operate, as a fraud or deceit upon persons. The NASD also found that Perosi willfully misrepresented material facts on an amended Form BD. **(NASD Case #C9B000021)**

**James Harry Petrantis (CRD #727455, Registered Principal, Oceanport, New Jersey)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two

years. In light of the financial status of Petrantis, no monetary sanction has been imposed. Without admitting or denying the allegations, Petrantis consented to the described sanction and to the entry of findings that he effected transactions in common stock at prices that were unfair and unreasonable in relation to the prevailing market price of the securities. Moreover, the NASD found that the prices charged to retail customers were excessive, and Petrantis failed to disclose this fact to the customers.

Petrantis' suspension began June 18, 2001, and will conclude at the close of business June 17, 2003. **(NASD Case #C07940047)**

**Cidney Present (CRD #2726581, If/k/a William Kelman, CRD #1336707) Registered Representative, St. Augustine, Florida** was barred from association with any NASD member in any capacity. The sanction was based on findings that Present willfully provided false information on his Form U-4 about his identity and concealed the fact that he had been previously registered and sanctioned under his former name. Present also failed to respond to NASD requests for information. **(NASD Case #C07010003)**

## **Individuals Barred Or Suspended**

**Keith Richard Procovic (CRD #2202049, Registered Representative, Deerfield Beach, Florida)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days for unauthorized trading, and barred from association with any NASD member in any capacity for failure to respond. The fine is due and payable upon

reentry into the securities industry. The sanctions were based on findings that Procovic effected the purchase of shares of stock in the joint account of public customers without their knowledge or prior authorization. Procovic also failed to respond to an NASD request for information.

Procovic's bar became effective May 28, 2001. (**NASD Case #C07000087**)

**Andre John Rampulla (CRD #2599771, Registered Representative, Massapequa, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rampulla consented to the described sanction and to the entry of findings that he caused the execution of securities transactions in the account of a public customer without the prior knowledge, authorization, or consent of the customer. (**NASD Case #C10010072**)

**Mark Anthony Rauseo (CRD#2143539, Registered Representative, Malibu Lake, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to pay \$20,000, plus interest, in restitution to a customer. The fine and proof of payment of restitution must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rauseo consented to the described sanctions and to the entry of findings that he made guarantees against loss in writing to public customers as an inducement to invest in stock.

Rauseo's suspension began June 4, 2001, and will conclude at the close of business June 3, 2002. (**NASD Case #C02010021**)

**Vladimir Rojankovski (CRD #4032100, Registered Representative, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,250, which includes disgorgement of \$750 in unlawful profits, and suspended from association with any NASD member in any capacity for 10 days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rojankovski consented to the described sanctions and to the entry of findings that he participated in outside business activities and failed to give prior written notice to, and to receive written approval from, his member firm prior to engaging in such activities.

Rojankovski's suspension began June 18, 2001, and concluded at the close of business June 27, 2001. (**NASD Case #C9B010043**)

**Craig Jeffrey Seligman (CRD #2226002, Registered Representative, Hoboken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 90 days, and required to pay \$3,500, plus interest, in restitution to a public customer. The fine payment and satisfactory proof of payment of the restitution must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Seligman

consented to the described sanctions and to the entry of findings that he effected securities transactions away from his member firm and failed to provide prior written notification to, or obtain written approval from, his member firm.

Seligman's suspension began June 4, 2001, and will conclude September 1, 2001. (**NASD Case #C10010061**)

**Frank Robert Selto (CRD #1990195, Registered Representative, Santa Rosa, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Selto failed to respond to NASD requests for information. (**NASD Case #C01000029**)

**Benedicto Valdez Serna (CRD #1604593, Registered Principal, Jacksonville, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Serna consented to the described sanction and to the entry of findings that he received \$1,000 in cash from a customer for investment in a mutual fund account, and rather than invest the funds as directed by the customer, he converted the funds to his own use and benefit. (**NASD Case #C07010033**)

**William Kevin Shanklin, III (CRD #2624350, Registered Representative, Washington, DC)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shanklin consented to the described sanction and to the entry of findings that he received \$9,000 from public customers to

be invested in securities, deposited the funds in his personal bank account, and used the funds for his personal benefit. The findings also stated that Shanklin failed to respond to NASD requests for information and documents and failed to appear and testify. (**NASD Case #C9A010016**)

**Gary Dwayne Smith (CRD #2579220, Registered Principal, Burlington, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to produce documents and to appear to testify. (**NASD Case #C9A010014**)

**Robert Alexander Stewart, Jr. (CRD #1387874, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 60 days, and required to disgorge \$2,200, plus interest, to public customers. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he participated in transactions away from his member firm and received compensation for the sales. The NASD found that Stewart failed to provide his member firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to participate in the transactions.

Stewart's suspension began July 2, 2001, and will conclude at the close of business August 30, 2001. (**NASD Case #C8B010005**)

**Jason Corie Strauss (CRD #2711294, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Strauss prepared and submitted a new account form to his member firm on behalf of an individual that he knew, or should have known, did not exist and that the information on the account form was false. (**NASD Case #C10000215**)

**William Harrison Tarrolly (CRD #442715, Registered Representative, Mequon, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tarrolly consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions by participating in the sale of a promissory note to a public customer and failed to give written notice of his intention to engage in such activity to his member firm and failed to receive written approval from the firm prior to engaging in such activity. The findings also stated that Tarrolly negligently misrepresented that the promissory note was fully guaranteed when, in fact, the note was subject to risk of repayment.

Tarrolly's suspension began June 18, 2001, and will conclude at the close of business September 17, 2001. (**NASD Case #C8A010026**)

**Christopher Michael Tomasulo (CRD #1220199, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tomasulo consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. The findings also stated that Tomasulo engaged in outside business activities and private securities transactions without prior written notice to, or approval from, his member firm. (**NASD Case #C9B010038**)

**Hiep The Trinh (CRD #2458464 Registered Representative, Placentia, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trinh consented to the described sanction and to the entry of findings that he received \$10,000 from a public customer to purchase certain mutual fund shares on her behalf. The findings stated that Trinh did not purchase the mutual fund shares as directed by the customer and, instead, converted the funds for his own benefit. (**NASD Case #C02010024**)

**Henry Abel Turner (CRD #2321042, Registered Principal, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. The fine must be paid before any application for reentry into the securities industry will be considered. Without admitting or denying the allegations, Turner consented

to the described sanctions and the entry of findings that he failed to ensure that his former member firm maintained its required net capital. The findings also stated that the firm, acting through Turner, caused its general ledger and net capital calculation, among other things, to be inaccurate, and failed to submit telegraphic notice of the firm's net capital deficiencies.

Turner's suspension began June 4, 2001, and concluded at the close of business June 13, 2001. **(NASD Case #C07010029)**

**Gregory Vinterfeld (CRD #2923584, Associated Person, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vinterfeld consented to the described sanction and to the entry of findings that he provided false responses on his Form U-4 and failed to respond to NASD requests for information. **(NASD Case #C02010023)**

**Michael Scott Vorsburgh (CRD #2790863, Registered Representative, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vorsburgh consented to the described sanction and to the entry of findings that he sold shares of stock for the account of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in the account. The findings also stated that Vorsburgh completed Authorizations to Journal

Securities or Funds without the knowledge or consent of public customers and submitted them to his member firm to transfer approximately \$7,912 from the customers' accounts to the accounts of other customers for Vorsburgh's use and benefit, thereby converting customers' funds for his own use and benefit. To accomplish the conversion, Vorsburgh affixed the signatures of customers to the forms without their knowledge or consent. **(NASD Case #C3B010010)**

**Gary Alan Vosick (CRD #2650242, Registered Representative, Lebanon, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for three months, and required to disgorge \$5,740, plus interest, in commissions to public customers. The fine payment and satisfactory proof of payment of the disgorgement, plus interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vosick consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with detailed written notice of the transactions, his role therein, and to receive permission from his firm to engage in the transactions.

Vosick's suspension began July 2, 2001, and will conclude at the close of business October 1, 2001. **(NASD Case #C8B010012)**

**Kenneth Michael Wade (CRD #2378256, Registered Representative, Roseville, California)** submitted a Letter of Acceptance, Waiver, and

Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wade consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior oral or written notification to, and receiving permission from, his member firm. **(NASD Case #C02010022)**

**Roger John Walstra (CRD #1227710, Registered Representative, DeMotte, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Walstra consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C8A010027)**

**Gary Lee Wasserman (CRD #1004904, Registered Representative, Westfield, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$30,000. Without admitting or denying the allegations, Wasserman consented to the described sanctions and to the entry of findings that as a result of his intentional failure to report transactions on behalf of his member firm in a timely manner, the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in an NNM security. **(NASD Case #CMS010059)**

**Gary Theodore Wisniewski (CRD #1856563, Registered Representative, Saugerties, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with

any NASD member in any capacity for two years, and ordered to disgorge \$6,868.86, representing commissions received, to public customers. The fine payment and satisfactory proof of payment of the disgorgement must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wisniewski consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Wisniewski's suspension began June 18, 2001, and will conclude at the close of business June 17, 2003. (**NASD Case #C11010021**)

### **Individual Fined**

**Frederick Titus Croft (CRD #861905, Registered Principal, Grand Haven, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$35,463.38, which includes the disgorgement of \$33,463.38 in transaction profits. Without admitting or denying the allegations, Croft consented to the described sanctions and to the entry of findings that he purchased shares of stock in IPOs for an account in which he had a beneficial interest. Each purchase involved securities of public offerings that later traded at a premium in the secondary market ("hot issues"). The findings also stated that Croft failed to notify his member firm, in writing, prior to executing any transactions that he had established and maintained a personal securities account with another member firm. In addition, the NASD found that Croft failed to notify, in writing, the

firm with which he maintained the account of his association with another member firm. (**NASD Case #C05010028**)

### **Decisions Issued**

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of June 8, 2001. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Freedom Investors Corp. (CRD #23714, Pewaukee, Wisconsin) and James Russell Fay (CRD #1003069, Registered Principal, Oconomowoc, Wisconsin)** were censured and fined \$40,000, jointly and severally. Fay was also suspended from association with any NASD member in any principal capacity for 90 days and required to requalify by exam before serving in any principal capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Fay, conducted a securities business while it failed to maintain the minimum required net capital, prepared inaccurate books and records, and prepared and filed inaccurate FOCUS Part IIA reports. Also, the firm and Fay failed to respond timely to NASD requests for information.

The firm and Fay have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal. (**NASD Case #C8A990071**)

**Jeffrey Booth Hodde (CRD #247308, Registered Principal, Summit, New Jersey)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days for unauthorized trading, and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before Hodde seeks reentry into the securities industry. The sanctions are based on findings that Hodde effected an unauthorized transaction in the account of a public customer and failed to respond to NASD requests for information.

Hodde has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (**NASD Case #C10010005**).

**Josephthal & Co., Inc. (CRD #3227, New York, New York)** was censured and fined \$10,000. The sanctions were based on findings that the firm failed to comply with the order of an arbitration panel to produce a document.

Josephthal & Co., Inc. has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (**NASD Case #CAF000015**)

**Vadim (a/k/a Steven) Shapiro (CRD #2562368, Registered Representative, Baltimore, Maryland)** was barred from association with any NASD member in any capacity and ordered to pay \$191,175.25, plus interest, in restitution to public customers. The sanctions were based on findings that Shapiro made material misrepresentations and omissions to public customers to induce them to purchase securities. The findings also stated that Shapiro failed to execute customer sell orders.

Shapiro has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C10000207)

## Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Christopher Aguado (CRD #3089463, Registered Representative, Secaucus, New Jersey)** was named as a respondent in an NASD complaint alleging that he recommended to, and effected for the securities account of, a public customer, the sale and purchase of common stock without having reasonable grounds for believing that such recommendation was suitable for the customer's financial situation and needs in that the recommendation involved investing the entire value of the account in a single speculative stock. (NASD Case #C9B010045)

**Henry Wilder Bailey (CRD #713351, Registered Representative, Watkinsville, Georgia)** was named as a respondent in an NASD complaint alleging that he recommended that public customers liquidate certain mutual funds they owned and use the proceeds from those sales to purchase other mutual funds having similar investment objectives. The NASD also alleges that these

recommendations lacked a reasonable basis inasmuch as the customers each incurred additional sales charges as a result of the switches in mutual funds, the mutual funds involved had similar investment objectives, and the customers' investment objectives had not changed. (NASD Case #C07010037)

**Benjamin Conde (CRD #2397658, Registered Representative, Fairfield, New Jersey)** was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the securities accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #C9B010052)

**Scott Douglas Flynn (CRD #2020872, Registered Principal, Highlands, New Jersey)** was named as a respondent in an NASD complaint alleging that he created and sent a fictitious monthly account statement to a public customer to give the false appearance that a request made by the customer to transfer funds from one account to another had been fulfilled. (NASD Case #C9B010044)

**J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California), Richard Leon Newberg (CRD #346857, Registered Principal, Golden Beach, Florida), and Dennis Jay Sturm (CRD #1407180, Registered Principal, Coral Springs, Florida)** were named as respondents in an NASD complaint alleging that the firm, Newberg, and Sturm participated directly, or indirectly, in undertakings involving the purchase of securities from issuers with a view to the distribution of such securities and, thereby, acted as underwriters of the unregistered

shell company and surviving entity securities. The complaint also alleges that this trading, including matched trades, in the securities of the shell companies created the false appearance of trading volume and market interest in the securities; induced other market makers to enter quotes; and allowed the respondents to artificially affect the market price for the securities. The complaint further alleges that the respondents, by the use of any means, instrumentality of interstate commerce, or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. In addition, the complaint alleges that the respondents aided and abetted the manipulative trading of others. The complaint alleges that Sturm, acting on behalf of the firm, certified that no one associated with the firm was directly or indirectly affiliated with the issuer when he knew, or should have known, that controlling shareholders were related to the respondents or other associated persons of the firm and falsely represented that the initial prices were based on trades with third-party brokers, unsolicited third-party transactions, or similar representations.

Moreover, the complaint alleges that Sturm and Newberg maintained, controlled, or had financial interest in accounts at other firms; failed to provide written notice of these accounts to the firm; and failed to provide prompt written notice to the firm that they were engaged in outside business activity for compensation.

The complaint also alleges that Newberg provided false testimony during an NASD investigation. In addition, the complaint alleges that the firm failed to supervise the trading and market making activity conducted by Sturm and Newberg; failed to devise, maintain, and enforce written supervisory procedures designed to focus on the potential for manipulation presented by trading securities in newly trading shell companies and failed to oversee the selection of companies in which the firm made markets and for which it filed Form 211 applications, or to review the accuracy and adequacy of the information in the Form 211 applications. (NASD Case #CAF010011)

**Reginald Bernard Knight (CRD #3100095, Registered Representative, West Palm Beach, Florida)** was named as a respondent in an NASD complaint alleging that he knowingly used funds credited to his securities account in error to effect securities transactions for personal profit. (NASD Case #C07010034)

**Charles Joseph Smercina (CRD #1915915, Registered Representative, Solon, Ohio)** was named as a respondent in an NASD complaint alleging that he received stock certificates and checks from a public customer to establish an individual retirement account rollover, failed to establish the account, and retained the certificates and checks until he returned them to the customer at a later date. (NASD Case #C8B010013)

**Yago Marti Sobrevias (CRD #2642527, Registered Representative, Madrid, Spain)** was named as a respondent in an NASD complaint alleging that he neglected to execute the order of a public customer and, instead,

executed an unauthorized transaction in the customer's account without the prior knowledge, authorization, or consent of the customer. The complaint also alleges that, in order to conceal the unauthorized transaction, Sobrevias prepared and sent false monthly account statements to the customer. The complaint further alleges that Sobrevias provided a letter of guarantee to the public customer that was not authorized by his member firm, and that he did not request authorization to issue the guarantee from its firm. In addition, the complaint alleges that Sobrevias failed to respond to NASD requests for information. (NASD Case #C05010027)

### **Firms Suspended For Failure To Supply Financial Information**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Ameri-First Securities Corporation**  
Dallas, Texas  
(May 14, 2001)

**Chaconia Financial Services, Inc.**  
Providence, Rhode Island  
(May 14, 2001)

**Germano Municipals Corp.**  
Sanibel, Florida  
(June 8, 2001)

**Ginsberg & Garipoli Securities Corp.**  
Alameda, California  
(June 8, 2001)

**W.J. Askin & Co., Incorporated**  
Washington, D.C.  
(June 12, 2001)

### **Suspensions Lifted**

The NASD has lifted the suspensions from membership on the date shown for the following firms because they have complied with formal written requests to submit financial information.

**Clements Company Investment Advisors, Inc.**  
San Diego, California  
(May 21, 2001)

**I.D.A. Financial Services, Inc.**  
Woodland Hills, California  
(June 1, 2001)

**Weston Capital Markets, Inc.**  
New York, New York  
(May 7, 2001)

**Individuals Barred Pursuant To NASD Rule 9540 Series For Failure To Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)**

**Fernandez, Roger Hannim**  
Vancouver, Washington  
(May 17, 2001)

**Grieg, Tommy A.**  
Santa Maria, California  
(May 30, 2001)

**Nonaka, Douglas Takeshi**  
Aiea, Hawaii  
(May 29, 2001)

**Individuals Suspended Pursuant To NASD Rule 9540 Series For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)**

**Chu, Chia Ewi**  
San Jose, California  
(May 23, 2001)

**Gerlach, Mark P.**  
Santa Monica, California  
(May 24, 2001)

**Hartlieb, Michael**  
St. Petersburg, Florida  
(June 4, 2001)

**Joslyn, Chad**  
Macedon, New York  
(May 25, 2001)

**Olton, Brian Murray**  
Concord, California  
(May 25, 2001)

**Ponce, William F.**  
Laguna Niguel, California  
(May 30, 2001)

**Trinidad, Chilannie**  
Buena Park, California  
(May 24, 2001)

**Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement**

The date the registration was suspended is included after the entry. If the individual has complied, the listing also includes the date the suspension was lifted.

**Kurczodyna, Joseph Edward**  
Lake Bluff, Illinois  
(May 23, 2001)

**Roon, Robert**  
Palm Beach Gardens, Florida  
(May 24, 2001)

**NASD Regulation Fines All-Tech, Houtkin, and Other Execs \$380,000 for Day Trading and Advertising Violations; Suspends Individuals**

NASD Regulation, Inc. censured and fined All-Tech Direct, Inc., of Montvale, NJ, \$250,000; and fined and suspended Harvey I. Houtkin, Chairman and CEO; Mark D. Shefts, President; and Harry Lefkowitz, Vice President of Operations for violating NASD rules in connection with All-Tech's day-trading business. The Securities and Exchange Commission also announced settlements with All-Tech, Shefts and Lefkowitz at the same time.

In settling this case, All-Tech, Houtkin, Shefts, and Lefkowitz neither admitted nor denied NASD Regulation's findings. The charges were contained in a complaint originally filed in July 2000.

NASD Regulation found that All-Tech, Shefts, and Lefkowitz failed to supervise the activities of employees who routinely arranged loans between customers. The loans, known as "journaling," enabled customers to meet margin calls, allowing them to continue trading. NASD Regulation found that All-Tech employees misrepresented the risks associated with the loans by telling customers the loans were basically guaranteed with virtually no risk. While the journaling occurred nationwide, NASD Regulation focused on five branches and found that, in those five branches, from January 1998 to January 1999, over 4,800 journals were recorded, transferring over \$130 million in loans between customer accounts. At times, non-registered persons arranged loans between customers who were located at different branches and did not know each other. In a number of

instances, the interest to be paid by the borrowing customer to the lending customer was set at an excessive rate. Hundreds of journal forms lacked signatures or included photocopied signatures. On some of the forms non-registered persons signed as branch managers, while on others, traders signed without full authority.

NASD Regulation also found that All-Tech and Houtkin made statements that were misleading, unwarranted, or without a sound basis in a number of print and radio advertisements, on the firm's Web site, during television appearances, and in a book that was given out by the firm as sales literature. The statements included:

- "Most of my customers have enjoyed successes virtually unheard of in the trading community."
- "[A]nyone with the financial capability and desire has the opportunity to participate in the market with the same advantages as a market making pro."
- "If you meet parameters set forth in this guide...your probability of success will be exceptionally high."
- "Electronic Day Trading appeals to executives, retirees, graduating college students and anyone who recognizes the unlimited earnings potential and quality of life which an Electronic Day Trader may achieve."
- "Perhaps three in ten" and "four in ten" people trained as day traders will become successful.

NASD Regulation also found that All-Tech, Houtkin and Shefts violated NASD rules by permitting

a statutorily disqualified person to participate actively in the firm's securities-related activities, even though he had been barred from the securities industry by the SEC in 1988. NASD Regulation further found that the firm, Houtkin, and Shefts violated NASD rules by failing to properly register an individual who assisted in the management of two All-Tech branch offices, held himself out as a broker, and made recommendations to customers.

In addition to the \$250,000 fine, All-Tech was also ordered to retain an outside consultant to review and make recommendations concerning the firm's policies and procedures as they relate to the matters covered by the settlement. Houtkin was fined \$50,000, suspended from associating with any NASD member in all capacities for 15 days and suspended as a principal and supervisor for 105 days. Shefts was fined \$50,000, suspended from associating with any NASD member in all capacities for 30 days and suspended as a principal and supervisor for 90 days. Lefkowitz was fined \$20,000, suspended from associating with any NASD member in all capacities for 60 days and suspended as a principal and supervisor for 60 days.

NASD Regulation previously settled with the three other respondents named in the case. Jeffrey Sadowski was barred from associating with any NASD member, Michael Benson was suspended from associating with any NASD member for 30 days and fined \$5,000, and David Niederkrome was suspended from associating with any NASD member for 10 days and fined \$5,000.

### **NASD Regulation Settles Five Disciplinary Actions Involving Day Trading**

NASD Regulation, Inc. has settled five separate disciplinary actions against firms providing day-trading services to the public. The five actions include findings of violations of the federal securities laws and NASD rules in the following areas:

- Misleading advertising materials
- Registration violations
- Improper loans to customers
- Improper sharing of commissions
- Short-sale violations
- Trade-reporting violations
- Deficient supervisory procedures

Without admitting or denying the allegations, all accepted the sanctions that include censures, the expulsion of one firm, and suspensions and fines against firms and individuals ranging from \$10,000 to \$75,000.

These actions were investigated and filed by NASD Regulation offices in New Orleans and Dallas. They represent a continuing effort on the part of NASD Regulation to address problem areas in day-trading business practices.

### ***Day-Trading Enforcement Actions***

#### **1. Landmark Securities Corporation and James C. Gillock, III—Case No. C05010022**

Landmark Securities Corporation and James C. Gillock, former president of Landmark—findings

include:

- a. The firm, through Gillock, used advertising materials that contained misleading statements regarding customers' access to the markets; inappropriately implied that customers were employees and that they would earn a high income; and misrepresented the risks of day-trading;
- b. The firm, through Gillock, allowed an individual to supervise day-trading activities while not properly registered;
- c. The firm, through Gillock, loaned funds to a customer for the purpose of meeting a margin requirement;
- d. The firm, through Gillock, paid securities transaction-related compensation to an unregistered entity; and
- e. The firm committed short sale and trade reporting violations.

Landmark was expelled from membership in the Association. Gillock was fined \$50,000 and suspended for two years in a principal capacity and for six months in all capacities. He is further required to requalify as a General Securities Representative by taking and passing the Series 7 examination, prior to acting again in that capacity.

#### **2. Momentum Securities, LLC—Case No. C05010018**

Momentum Securities, LLC—findings include:

- a. The firm used advertising material that failed to disclose risks associated with day trading; exaggerated customers' ability to access the markets; failed to disclose

risks of market fluctuation; failed to disclose possible delays to system access and trade execution; and exaggerated the capabilities of technology-based services offered to customers;

b. The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing customer credit parameters and controls to detect entry of orders that exceeded such parameters. These shortcomings resulted in the execution of an order to purchase stock in the amount of approximately \$11.5 million entered in error by a firm customer;

c. The firm paid securities transaction-related compensation to unregistered entities;

d. The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing short-sale and trade reporting; and

e. The firm committed short-sale and trade-reporting violations.

Momentum was censured and fined a total of \$75,000.

**3. CyBerBroker, Inc. (n/k/a CyBerCorp, Inc.) and Mark K. Stryker—Case No. C05010016**

a. CyBerBroker, Inc. and Mark K. Stryker, former president of CyBerBroker—The firm, through Stryker, allowed nine individuals to execute customer equity transactions while not properly registered as equity traders.

CyBerBroker and Stryker were each censured, together fined a total of \$16,000 and required to forfeit commissions of \$4,000.

**4. Cornerstone Securities Corporation and Russell A. Grigsby—Case No. C06010010**

Cornerstone Securities Corporation and Russell A. Grigsby, former president of Cornerstone—findings include:

- The firm, through Grigsby, loaned funds to five public customers for the purpose of meeting Reg T margin requirements;
- The firm executed Nasdaq National Market short sale transactions at or below the inside bid when the current inside bid was below the preceding inside bid;
- The firm committed short-sale and trade-reporting violations;
- The firm used advertising materials that mitigated the risks of day trading and potential loss of capital; failed to disclose possible delays to system access and trade execution; and improperly implied that a “day trader” serves as an employee of the firm; and
- The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing the NASD’s rules governing advertising.

Cornerstone and Grigsby were both censured and together fined \$35,000.

**5. Summit Trading, Inc. and William N. Sunshine—Case No. C06010008**

Summit Trading, Inc. and William N. Sunshine, president of Summit Trading—findings include:

- The firm, through Sunshine, allowed proprietary trades to be executed through the Small Order Execution System (SOES);
- The firm committed short-sale and trade-reporting violations;
- The firm, through Sunshine, used advertising materials that contained misleading statements regarding customers’ access to the markets; misrepresented the risks of day trading; and inappropriately implied that customers were employees of the firm; and
- The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing advertising and SOES.

Summit and Sunshine were both censured and fined a total of \$20,000, (\$15,000 of which is a joint fine, and \$5,000 of which is assessed against the firm only).